

Ex. #535



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Counting Number
WLU 535-1

Canadian Wildlife Service Service canadien de la faune
1110, 10025 Jasper Avenue
Edmonton, Alberta
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April 2, 1976

Ms Lorraine Allison
Biologist, COPE
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Inuvik, N.W.T.

MACKENZIE VALLEY PIPELINE INDUSTRY
EXHIBIT NO. 535-1A E
April 6/76
Yellowknife N.W.T.
C.O.P.E.

Dear Lorraine:

Re: Response to your inquiry of January 19/76

Thank you for your letter of January 19th asking for answers to 18 questions regarding administration of Migratory Bird Regulations and Sanctuaries in the Northwest Territories. The length of the questions has contributed to the tardiness in response. Some of the questions required a great deal of effort to answer thoroughly. As the questions have several parts to them, I have broken the answers down to sub-categories.

1. In the sanctuaries, what agency controls the land surface? subsurface?
What agency controls habitat?
What agency administer effects on birds?

ANSWER

- a) DIAND owns and controls the land surface and subsurface in the sanctuaries.
- b) CWS controls the habitat in the sense that Sanctuary Regulations and Permits stipulate that nobody can harm it.
- c) CWS administers Sanctuary Regulations and Migratory Bird Regulations under the authority of the Migratory Birds Convention Act and the Migratory Birds Convention, which affects specific birds.

2. What are the permit application requirements?
Who must apply for a permit?
How long does CWS have to consider the application?
What information is required?
What activities are allowed without permits?

ANSWER

- a) All activities which might adversely affect migratory birds or the eggs, nests or habitat within a Migratory Birds Sanctuary require a permit; therefore, anyone (in response to question 2(b)), individual or corporate body, must apply for a permit. Some activities also require a N.W.T. Land Use Regulations Permit.

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- c) Normally, CWS must consider an application for a permit within 30 days to conform with N.W.T. Land Use Regulations stipulations.
 - d) If the information supplied by the permit applicant is not satisfactory to the professional staff of the CWS, an extension may be required.
 - e) Many activities are allowed without permits such as bird watching, photography, canoeing, skiing and so on as long as migratory birds or the eggs, nests or habitat are not disturbed.
3. Is there a standard set of operating conditions and stipulations attached to each permit? If so, what are they?

ANSWER

There is a standard set of operating conditions and stipulations attached to each permit. The stipulations may be modified by type of activity, season, time frame and rights of access and so on, as indicated in the attached example permit.

4. Explain the similarities and differences between the sanctuary permit system and that used by DIAND in land use operations.
Can CWS refuse to allow an operation in a sanctuary if DIAND approves it?
Have you ever forbidden any? On what grounds? Please give details.

ANSWER

- a) The permit system used by DIAND under their Land Use Regulations covers all of the Northwest Territories whereas the Migratory Birds Sanctuary Permits only apply to Migratory Birds Sanctuaries. The Migratory Birds Sanctuary Permit is mainly concerned about migratory birds and their habitat whereas the land use permits issued by DIAND are concerned about the total environment.
 - b) CWS can refuse to issue a permit to any person and cancel any permit that has been issued if in the opinion of a responsible officer of CWS that person has failed to comply with the conditions set out in the permit or the activities being carried on are likely to be harmful to migratory birds or the eggs, nests or habitat of migratory birds within a Migratory Birds Sanctuary.
 - c) Our stipulations forbid activities which are likely to disturb migratory birds or their eggs or habitat. That usually means restricted operations during the period April 1 - October 1 when most migratory birds are present.
5. What are the specific requirements of the sanctuary regulations?

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ANSWER

The specific requirements of the Migratory Bird Sanctuary Regulations are outlined in the Canada Gazette, Part II, Volume 108, Number 18, dated October 25, 1974, a copy of which is attached.

6. Do you require that a bond be posted? In all situations? How large is it?
If the company fails to act to the satisfaction of CWS, can CWS retain the bond? Without court action? How long? Can CWS use a bond to clean up a mess or can you merely hold it until the mess is cleaned up by the company?

ANSWER

To date no bonds have been required from operators conducting activities within sanctuaries.

7. Do you consider any of your operating conditions unenforceable? If so, which ones?

ANSWER

No. If a condition is not of value in controlling an activity or in outlining a procedure to be taken, it would not be there.

8. Some areas within sanctuaries have been identified as "critical areas". Is industrial activity allowed within "critical areas"? If so, is there any difference in the operating conditions attached to permits between these areas and the rest of the sanctuary?

ANSWER

Industrial activity has been allowed in critical areas of the sanctuaries. There are distinct differences between operating stipulations on the permit which govern aircraft, vehicle and boat access routes, time of activity, numbers of overland passes of ground vehicles, ground bearing pressure limits of those vehicles and the type of activity allowed, depending on the sensitivity of the area at the time of operation.

9. How frequently are inspections carried out in the Delta? on Banks Island?

ANSWER

Inspections are carried out as often as necessary to determine if conditions of the permit are being followed. Judgement on the frequency of inspections depends on the amount and kind of activity.

10. What power does the enforcement officer in Inuvik have? On his own authority, can he demand that changes be made? shut down an operation? initiate and carry out a prosecution? At what point must he seek instructions and approval from Edmonton? from Ottawa? Who decides whether or not a prosecution will occur?

ANSWER

All Migratory Birds Enforcement Coordinators are Game Officers appointed by the Minister under the authority of the Migratory Birds Convention



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Act, Section 5, Subsection 1. They can demand changes be made if they find a permittee conducting an activity within a sanctuary contrary to the terms of a permit. They have authority to shut down an operation and can initiate and carry out an investigation and prosecution. If they believe a prosecution is necessary, they would normally advise the Head, Regulations and Enforcement Section in Edmonton. Judgement on procedure in any case is brought to bear at three levels of management in Edmonton and two levels of management in Ottawa. That judgement takes account of the nature of the offence and the likely effect of evidence in a court of law in the possible event of setting a legal precedent.

11. Does CWS have an enforcement policy? If so, what is it? How does the inspector determine that an infraction has taken place?

ANSWER

The CWS enforcement role is more one of coordination of the R.C.M. Police, provincial and territorial enforcement capabilities than taking direct enforcement action itself. For example, we have only one employee in the Northwest Territories appointed as a Game Officer for carrying out the Migratory Birds Convention Act and its Regulations. Thus our policies are fundamentally to enforce the Migratory Bird Regulations and the regulations under other acts for which we are responsible but are modified by the policies of cooperating agencies. The enforcement officer detects infractions by comparing visible evidence which could be used in a Court of law against existing legislation or permit stipulations. All enforcement officers must, of course, exercise discretion in application of the law.

12. Has CWS prosecuted any company for its operations within a sanctuary? If so, under what act and section? Can you prosecute under the terms and conditions of the permit? Please outline in detail the conditions under which prosecution could occur.

ANSWER

- a) No company to date has been prosecuted for an operation conducted within a sanctuary; however, several operations have been shut down under the authority of Migratory Bird Sanctuary Regulations, Section 9.
- b) We are able to prosecute if the terms and conditions of a permit are violated. Ordinarily, we would require an operator to stop operations and rectify.
- c) The conditions under which prosecution would occur depend on the kind of failure to comply with the conditions set out in the sanctuary permit.

13. Within sanctuaries, how is aircraft traffic regulated?
Are there stipulations with regard to altitude? time of year? flight paths?

Has any operation had to curtail its activities because the ceiling was below the regulated limit? (i.e. when it was safe to fly)

ANSWER

- a) Air traffic is regulated by the Ministry of Transport.
- b) Aircraft under the control of an operator is regulated by stipulations of minimum flight elevations, routes and time frames. Once aircraft activity is allowed within the flight elevation stipulations we make, it may be altered recognizing that weather conditions can force pilots to lower elevations to satisfy air safety requirements. Weather, air safety regulations and pilot judgement are not controlled by CWS.
14. Under the Migratory Birds Convention Act, does CWS have any jurisdiction over barrier beaches, river islands, offshore islands or spits of known or potential importance to waterfowl, but not within a sanctuary?

ANSWER

CWS does not have any jurisdiction over land activities outside a bird sanctuary; however, the Migratory Birds Regulations prohibit a number of activities in order to protect migratory birds anywhere in Canada. As an example, Section 5 of the Migratory Birds Regulations covers general prohibitions mainly related to hunting. A copy of the Act and Regulations is attached.

15. Is there any agreement of any kind that gravel will not be removed from barrier or offshore beaches? If so, what is the date of that agreement?

ANSWER

CWS does not have any agreement of any kind that gravel will not be removed from barrier or offshore beaches.

16. Does CWS have any direct role in determining the fate of areas of importance to migratory birds in the N.W.T. other than its position on the land use advisory committee?

ANSWER

CWS, as a component of Environment Canada, negotiates with DIAND and the Government of the Northwest Territories concerning the fate of areas of importance to migratory birds in the Northwest Territories. Such negotiations take place under the authority of the Canada Wildlife Act and the Migratory Birds Convention Act.

17. Within the sanctuaries, how many wells have been drilled in Kendall Island?
Banks #1? Banks #2?
How many airstrips have been constructed on each?

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17. How many miles of seismic lines have been run on each?
How many infractions have been reported?
What is the nature of any infractions? Please give details - name of company is not required.

ANSWER

Nine wells have been drilled in the Kendall Island Sanctuary, 3 in Banks Island #1 and none in Banks Island #2.

Two airstrips have been constructed on the Kendall Island Sanctuary and 5 on Banks Island #1.

There are 515 miles of seismic line on Kendall Island Sanctuary.

The other information for Banks Island Sanctuary #1 and #2 is available in the voluminous land use permit files of DIAND. Our concern is not whether there are 50 miles of seismic line or 1 mile of seismic line but whether or not the environment is being disturbed at all. From our experience, there is no direct relationship between length of seismic line and negative effects but the reverse could be true.

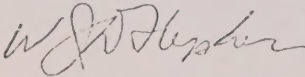
18. What is the current status of seismic exploration in the sanctuaries?
Is any being done this winter? In critical areas? Has any been refused?
On what grounds?

ANSWER

a) Kendall Island Sanctuary is the only one in which seismic operations are ongoing.

d) To date no seismic operations have been refused but two have been subjected to other line alternatives or stringent operating conditions. Alterations to line locations were to avoid known grizzly bear den sites. Strict operating conditions were applied to a seismic operation in a critical area of a sanctuary with the company given the understanding that well drilling would not be allowed.

Yours truly,



W.J.D. Stephen
Region Director

